

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. The medical evidence includes the following assessment from the petitioner's dentist dated October 26,

2006: "(Petitioner's) lack of posterior teeth is affecting her general overall health, with constant headaches, joint pain, premature destruction of anterior teeth due to a lack of posterior teeth. She has an inability to chew and grind food, therefore not gaining proper nutrition from the food she consumes. Her diet is poor because she can't chew." The dentist also indicated the following problems that could be anticipated: "Continued loss of teeth, possible joint disfunction leading to irreparable joint damage. Movement of remaining teeth to compensate for the missing ones, accelerated wear of remaining teeth due to parafunctional chewing."

3. On a form dated September 18, 2006 the petitioner's treating physician noted: "Complaint of continued facial pain and headache. Tenderness of (R) temporomandibular joint. Absent molars, thus chews on anterior teeth (with) flattening of teeth and bruxism¹."

4. On a questionnaire dated March 22, 2007, a specialist who is treating the petitioner for her sleep disorder stated: "(Petitioner) has difficult to control obstructive sleep apnea, which wearing dentures while asleep might help treat. Untreated or undertreated sleep apnea may

worsen her mood, lead to daytime sleepiness/fatigue and may increase risk for cardiovascular disease such as hypertension." Outpatient records and office notes indicate that the petitioner has not been fully evaluated for surgery for her sleep apnea.

5. Tests in August 2007 for swallowing difficulties reported by the petitioner were normal.

6. An undated and unsigned report on the letterhead of a psychiatry and psychotherapy practice provides as follows:

[Petitioner's] current depression and anxiety stem, in large part, from her struggles to make her house habitable. This is coupled with her many health problems, and attempts to find doctors who will give her proper treatment and medications. Her sense of self-worth has been severely compromised, as she feels she is always in a fight with various authorities - be they medical, legal, governmental - in order to be heard. Her feelings of hopelessness and helplessness are increasing. She is always dealing with the pain and suffering from her medical problems.

Her teeth and jaw, have been two of the recurring problems. From what she has told me, she will not be able to chew for much longer if she does not get the requested dentures.

I believe this denial by Medicaid to fund her denture work could potentially throw [petitioner] into a more profound depression.

7. In denying the petitioner Medicaid coverage under M108, the Department determined that neither TMJ nor bruxism

¹ I.e., gnashing of teeth.

is a unique condition, and that both can potentially be treated effectively with dental devices that are covered by Medicaid. Although the evidence indicates that the petitioner has reported difficulties using specific dental devices, there is no evidence directly contradicting the Department's conclusions regarding failure to exhaust alternative (covered) treatment options for TMJ and bruxism.

8. There is also no evidence that would indicate that the petitioner's reported chewing problems could not be treated with modifications in her diet and food preparation.

9. Although the petitioner's mental health status is guarded, the scant evidence submitted in this regard (*supra*) does not conclusively establish that lack of dentures, in and of itself, is likely to cause a worsening of the petitioner's depression, especially if the physical symptoms resulting from her dental problems can be satisfactorily addressed by other means.

ORDER

The Department's decision is affirmed.

REASONS

As a cost-saving measure, the state has eliminated coverage of dentures for all adult Medicaid beneficiaries. W.A.M. § M621.6. However, OVHA has a procedure for requesting exceptions to its non-coverage, which requires the recipient to provide information about her situation and supporting documentation. M108. OVHA must then review the information in relation to a number of criteria as set forth below:

1. Are there extenuating circumstances that are unique to the beneficiary such that there would be serious detrimental health consequences if the service or item were not provided?
2. Does the service or item fit within a category or subcategory of services offered by the Vermont Medicaid program for adults?
3. Has the service or item been identified in rule as not covered, and has new evidence about efficacy been presented or discovered?
4. Is the service or item consistent with the objective of Title XIX?
5. Is there a rational basis for excluding coverage of the service or item? The purpose of this criterion is to ensure that the department does not arbitrarily deny coverage for a service or item. The department may not deny an individual coverage of a service or item solely based on its cost.
6. Is the service or item experimental or investigational?

7. Have the medical appropriateness and efficacy of the service or item been demonstrated in the literature or by experts in the field?
8. Are there less expensive, medically appropriate alternatives not covered or not generally available?
9. Is FDA approval required, and if so, has the service or item been approved?
10. Is the service or item primarily and customarily used to serve a medical purpose, and is it generally not useful to an individual in the absence of an illness, injury, or disability?

The Board has held that M108 decisions are within the discretion of the Department and will not be overturned unless OVHA has clearly abused its discretion by either failing to consider and address all of the pertinent medical evidence under each criterion set forth above or by reaching a result that cannot be reasonably supported by the evidence. See, e.g., Fair Hearing No. 20,275.

The Board has also recognized the importance in M108 cases of distinguishing between physical and mental health issues. In this regard the Board has specifically ruled that as a general matter neither an inability to chew food, facial pain, nor depression is a "unique" medical problem, either alone or in combination, sufficient to establish "extenuating circumstances" for dentures within the meaning of the above provisions. See Fair Hearing Nos. 20,275, 19,989 and 19,425.

In this case, there is no evidence directly addressing, much less contradicting, the Department's determination that the petitioner's dental pain and sleep problems do not require dentures as the sole reasonable treatment option.² Similarly, the Board has held that the M108 criteria (*supra*) require a significantly more specific and severe mental health prognosis than a "potential" for increased depression. Based on the evidence that was submitted on the petitioner's behalf, it cannot be concluded that OVHA has abused its discretion in its assessment that the petitioner has not demonstrated that dentures are necessary to avoid a worsening or lack of improvement in either her physical or mental health.

In light of the above, the Board is bound to affirm the Department's decision. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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² Although this may beg the question of whether the \$475 annual cap on dental services is sufficient to enable the petitioner to avail herself of the dental services that the Department appears to concede are medically necessary, the petitioner may be eligible for General Assistance (GA) coverage to make up the difference. See Fair Hearing No. 19,835. If the petitioner is denied GA under these circumstances, she is free to appeal that decision.